

ASSEMBLY BILL

No. 262

Introduced by Assembly Member Chan

February 4, 2003

An act to amend Sections 56.05 and 56.10 of the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

AB 262, as introduced, Chan. Personal information.

(1) Existing law prohibits a provider of health care, a health care service plan contractor, or corporation and its subsidiaries and affiliates from intentionally sharing, selling, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. Violation of these provisions are subject to a civil action for compensatory and punitive damages; and if a violation results in economic loss of personal injury to a patient, it is punishable as a misdemeanor.

This bill would provide that this prohibition also applies to the marketing of medical information, as defined, excluding from the definition of marketing communications that are not made for compensation from a 3rd party or for specified descriptive purposes, or that are tailored to the circumstances of a particular individual, as specified.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 56.05 of the Civil Code is amended to
2 read:

3 56.05. For purposes of this part:

4 (a) “Authorization” means permission granted in accordance
5 with Section 56.11 or 56.21 for the disclosure of medical
6 information.

7 (b) “Authorized recipient” means any person who is
8 authorized to receive medical information pursuant to Section
9 56.10 or 56.20.

10 (c) “Contractor” means any person or entity that is a medical
11 group, independent practice association, pharmaceutical benefits
12 manager, or a medical service organization and is not a health care
13 service plan or provider of health care. “Contractor” does not
14 include insurance institutions as defined in subdivision (k) of
15 Section 791.02 of the Insurance Code or pharmaceutical benefits
16 managers licensed pursuant to the Knox-Keene Health Care
17 Service Plan Act of 1975 (Chapter 2.2 (commencing with Section
18 1340) of Division 2 of the Health and Safety Code).

19 (d) “Health care service plan” means any entity regulated
20 pursuant to the Knox-Keene Health Care Service Plan Act of 1975
21 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the
22 Health and Safety Code).

23 (e) “Licensed health care professional” means any person
24 licensed or certified pursuant to Division 2 (commencing with
25 Section 500) of the Business and Professions Code, the
26 Osteopathic Initiative Act or the Chiropractic Initiative Act, or
27 Division 2.5 (commencing with Section 1797) of the Health and
28 Safety Code.

29 (f) “Market” means to make a communication about a product
30 or service, a purpose of which is to encourage recipients of the
31 communication to purchase or use the product or service.
32 “Marketing” does not include any of the following:



1 (1) *Communications made orally for which the writer does not*
2 *receive direct or indirect remuneration from a third party for*
3 *making the communication.*

4 (2) *Communications made for the purpose of describing a*
5 *provider's participation in a health care provider network or*
6 *health plan network, or for the purpose of describing if, and the*
7 *extent to which, a product or service, or payment for a product or*
8 *service, is provided by a provider or plan or included in a plan of*
9 *benefits.*

10 (3) *Communications that are tailored to the circumstances of a*
11 *particular individual, if the communications are either made by a*
12 *health care provider to an individual as part of the treatment of the*
13 *individual, and for the purpose of furthering the treatment of that*
14 *individual, or made by a health care provider or health plan to an*
15 *individual in the course of managing the treatment of that*
16 *individual or for the purpose of directing or recommending to that*
17 *individual alternative treatments, therapies, health care providers,*
18 *or settings of care, so long as the health care provider or health*
19 *plan is not separately remunerated by a third party solely for*
20 *making the communication.*

21 (g) "Medical information" means any individually
22 identifiable information, in electronic or physical form, in
23 possession of or derived from a provider of health care, health care
24 service plan, pharmaceutical company, or contractor regarding a
25 patient's medical history, mental or physical condition, or
26 treatment. "Individually identifiable" means that the medical
27 information includes or contains any element of personal
28 identifying information sufficient to allow identification of the
29 individual, such as the patient's name, address, electronic mail
30 address, telephone number, or social security number, or other
31 information that, alone or in combination with other publicly
32 available information, reveals the individual's identity.

33 ~~(g)~~

34 (h) "Patient" means any natural person, whether or not still
35 living, who received health care services from a provider of health
36 care and to whom medical information pertains.

37 ~~(h)~~

38 (i) "Pharmaceutical company" means any company or
39 business, or an agent or representative thereof, that manufactures,
40 sells, or distributes pharmaceuticals, medications, or prescription

1 drugs. “Pharmaceutical company” does not include a
2 pharmaceutical benefits manager, as included in subdivision (c),
3 or a provider of health care.

4 ~~(i)~~

5 (j) “Provider of health care” means any person licensed or
6 certified pursuant to Division 2 (commencing with Section 500)
7 of the Business and Professions Code; any person licensed
8 pursuant to the Osteopathic Initiative Act or the Chiropractic
9 Initiative Act; any person certified pursuant to Division 2.5
10 (commencing with Section 1797) of the Health and Safety Code;
11 any clinic, health dispensary, or health facility licensed pursuant
12 to Division 2 (commencing with Section 1200) of the Health and
13 Safety Code. “Provider of health care” does not include insurance
14 institutions as defined in subdivision (k) of Section 791.02 of the
15 Insurance Code.

16 SEC. 2. Section 56.10 of the Civil Code is amended to read:

17 56.10. (a) No provider of health care, health care service
18 plan, or contractor shall disclose medical information regarding a
19 patient of the provider of health care or an enrollee or subscriber
20 of a health care service plan without first obtaining an
21 authorization, except as provided in subdivision (b) or (c).

22 (b) A provider of health care, a health care service plan, or a
23 contractor shall disclose medical information if the disclosure is
24 compelled by any of the following:

25 (1) By a court pursuant to an order of that court.

26 (2) By a board, commission, or administrative agency for
27 purposes of adjudication pursuant to its lawful authority.

28 (3) By a party to a proceeding before a court or administrative
29 agency pursuant to a subpoena, subpoena duces tecum, notice to
30 appear served pursuant to Section 1987 of the Code of Civil
31 Procedure, or any provision authorizing discovery in a proceeding
32 before a court or administrative agency.

33 (4) By a board, commission, or administrative agency pursuant
34 to an investigative subpoena issued under Article 2 (commencing
35 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
36 2 of the Government Code.

37 (5) By an arbitrator or arbitration panel, when arbitration is
38 lawfully requested by either party, pursuant to a subpoena duces
39 tecum issued under Section 1282.6 of the Code of Civil Procedure,

1 or any other provision authorizing discovery in a proceeding
2 before an arbitrator or arbitration panel.

3 (6) By a search warrant lawfully issued to a governmental law
4 enforcement agency.

5 (7) By the patient or the patient's representative pursuant to
6 Chapter 1 (commencing with Section 123100) of Part 1 of
7 Division 106 of the Health and Safety Code.

8 (8) By a coroner, when requested in the course of an
9 investigation by the coroner's office for the purpose of identifying
10 the decedent or locating next of kin, or when investigating deaths
11 that may involve public health concerns, organ or tissue donation,
12 child abuse, elder abuse, suicides, poisonings, accidents, sudden
13 infant death, suspicious deaths, unknown deaths, or criminal
14 deaths, or when otherwise authorized by the decedent's
15 representative. Medical information requested by the coroner
16 under this paragraph shall be limited to information regarding the
17 patient who is the decedent and who is the subject of the
18 investigation and shall be disclosed to the coroner without delay
19 upon request.

20 (9) When otherwise specifically required by law.

21 (c) A provider of health care, or a health care service plan may
22 disclose medical information as follows:

23 (1) The information may be disclosed to providers of health
24 care, health care service plans, contractors, or other health care
25 professionals or facilities for purposes of diagnosis or treatment of
26 the patient. This includes, in an emergency situation, the
27 communication of patient information by radio transmission or
28 other means between emergency medical personnel at the scene of
29 an emergency, or in an emergency medical transport vehicle, and
30 emergency medical personnel at a health facility licensed pursuant
31 to Chapter 2 (commencing with Section 1250) of Division 2 of the
32 Health and Safety Code.

33 (2) The information may be disclosed to an insurer, employer,
34 health care service plan, hospital service plan, employee benefit
35 plan, governmental authority, contractor, or any other person or
36 entity responsible for paying for health care services rendered to
37 the patient, to the extent necessary to allow responsibility for
38 payment to be determined and payment to be made. If (A) the
39 patient is, by reason of a comatose or other disabling medical
40 condition, unable to consent to the disclosure of medical

1 information and (B) no other arrangements have been made to pay
2 for the health care services being rendered to the patient, the
3 information may be disclosed to a governmental authority to the
4 extent necessary to determine the patient's eligibility for, and to
5 obtain, payment under a governmental program for health care
6 services provided to the patient. The information may also be
7 disclosed to another provider of health care or health care service
8 plan as necessary to assist the other provider or health care service
9 plan in obtaining payment for health care services rendered by that
10 provider of health care or health care service plan to the patient.

11 (3) The information may be disclosed to any person or entity
12 that provides billing, claims management, medical data
13 processing, or other administrative services for providers of health
14 care or health care service plans or for any of the persons or entities
15 specified in paragraph (2). However, no information so disclosed
16 shall be further disclosed by the recipient in any way that would
17 be violative of this part.

18 (4) The information may be disclosed to organized committees
19 and agents of professional societies or of medical staffs of licensed
20 hospitals, licensed health care service plans, professional
21 standards review organizations, independent medical review
22 organizations and their selected reviewers, utilization and quality
23 control peer review organizations as established by Congress in
24 Public Law 97-248 in 1982, contractors, or persons or
25 organizations insuring, responsible for, or defending professional
26 liability that a provider may incur, if the committees, agents, health
27 care service plans, organizations, reviewers, contractors, or
28 persons are engaged in reviewing the competence or qualifications
29 of health care professionals or in reviewing health care services
30 with respect to medical necessity, level of care, quality of care, or
31 justification of charges.

32 (5) The information in the possession of any provider of health
33 care or health care service plan may be reviewed by any private or
34 public body responsible for licensing or accrediting the provider
35 of health care or health care service plan. However, no
36 patient-identifying medical information may be removed from the
37 premises except as expressly permitted or required elsewhere by
38 law, nor shall that information be further disclosed by the recipient
39 in any way that would violate this part.



1 (6) The information may be disclosed to the county coroner in
2 the course of an investigation by the coroner's office when
3 requested for all purposes not included in paragraph (8) of
4 subdivision (b).

5 (7) The information may be disclosed to public agencies,
6 clinical investigators, including investigators conducting
7 epidemiologic studies, health care research organizations, and
8 accredited public or private nonprofit educational or health care
9 institutions for bona fide research purposes. However, no
10 information so disclosed shall be further disclosed by the recipient
11 in any way that would disclose the identity of any patient or be
12 violative of this part.

13 (8) A provider of health care or health care service plan that has
14 created medical information as a result of employment-related
15 health care services to an employee conducted at the specific prior
16 written request and expense of the employer may disclose to the
17 employee's employer that part of the information that:

18 (A) Is relevant in a lawsuit, arbitration, grievance, or other
19 claim or challenge to which the employer and the employee are
20 parties and in which the patient has placed in issue his or her
21 medical history, mental or physical condition, or treatment,
22 provided that information may only be used or disclosed in
23 connection with that proceeding.

24 (B) Describes functional limitations of the patient that may
25 entitle the patient to leave from work for medical reasons or limit
26 the patient's fitness to perform his or her present employment,
27 provided that no statement of medical cause is included in the
28 information disclosed.

29 (9) Unless the provider of health care or health care service plan
30 is notified in writing of an agreement by the sponsor, insurer, or
31 administrator to the contrary, the information may be disclosed to
32 a sponsor, insurer, or administrator of a group or individual insured
33 or uninsured plan or policy that the patient seeks coverage by or
34 benefits from, if the information was created by the provider of
35 health care or health care service plan as the result of services
36 conducted at the specific prior written request and expense of the
37 sponsor, insurer, or administrator for the purpose of evaluating the
38 application for coverage or benefits.

39 (10) The information may be disclosed to a health care service
40 plan by providers of health care that contract with the health care

1 service plan and may be transferred among providers of health care
2 that contract with the health care service plan, for the purpose of
3 administering the health care service plan. Medical information
4 may not otherwise be disclosed by a health care service plan except
5 in accordance with the provisions of this part.

6 (11) Nothing in this part shall prevent the disclosure by a
7 provider of health care or a health care service plan to an insurance
8 institution, agent, or support organization, subject to Article 6.6
9 (commencing with Section 791) of Part 2 of Division 1 of the
10 Insurance Code, of medical information if the insurance
11 institution, agent, or support organization has complied with all
12 requirements for obtaining the information pursuant to Article 6.6
13 (commencing with Section 791) of Part 2 of Division 1 of the
14 Insurance Code.

15 (12) The information relevant to the patient's condition and
16 care and treatment provided may be disclosed to a probate court
17 investigator engaged in determining the need for an initial
18 conservatorship or continuation of an existent conservatorship, if
19 the patient is unable to give informed consent, or to a probate court
20 investigator, probation officer, or domestic relations investigator
21 engaged in determining the need for an initial guardianship or
22 continuation of an existent guardianship.

23 (13) The information may be disclosed to an organ
24 procurement organization or a tissue bank processing the tissue of
25 a decedent for transplantation into the body of another person, but
26 only with respect to the donating decedent, for the purpose of
27 aiding the transplant. For the purpose of this paragraph, the terms
28 "tissue bank" and "tissue" have the same meaning as defined in
29 Section 1635 of the Health and Safety Code.

30 (14) The information may be disclosed when the disclosure is
31 otherwise specifically authorized by law, such as the voluntary
32 reporting, either directly or indirectly, to the federal Food and
33 Drug Administration of adverse events related to drug products or
34 medical device problems.

35 (15) Basic information, including the patient's name, city of
36 residence, age, sex, and general condition, may be disclosed to a
37 state or federally recognized disaster relief organization for the
38 purpose of responding to disaster welfare inquiries.

39 (16) The information may be disclosed to a third party for
40 purposes of encoding, encrypting, or otherwise anonymizing data.



1 However, no information so disclosed shall be further disclosed by
2 the recipient in any way that would be violative of this part,
3 including the unauthorized manipulation of coded or encrypted
4 medical information that reveals individually identifiable medical
5 information.

6 (17) For purposes of disease management programs and
7 services as defined in Section 1399.901 of the Health and Safety
8 Code, information may be disclosed as follows: (A) to any entity
9 contracting with a health care service plan or the health care
10 service plan's contractors to monitor or administer care of
11 enrollees for a covered benefit, provided that the disease
12 management services and care are authorized by a treating
13 physician, or (B) to any disease management organization, as
14 defined in Section 1399.900 of the Health and Safety Code, that
15 complies fully with the physician authorization requirements of
16 Section 1399.902 of the Health and Safety Code, provided that the
17 health care service plan or its contractor provides or has provided
18 a description of the disease management services to a treating
19 physician or to the health care service plan's or contractor's
20 network of physicians. Nothing in this paragraph shall be
21 construed to require physician authorization for the care or
22 treatment of the adherents of any well-recognized church or
23 religious denomination who depend solely upon prayer or spiritual
24 means for healing in the practice of the religion of that church or
25 denomination.

26 (d) Except to the extent expressly authorized by the patient or
27 enrollee or subscriber or as provided by subdivisions (b) and (c),
28 no provider of health care, health care service plan contractor, or
29 corporation and its subsidiaries and affiliates shall intentionally
30 share, sell, *market*, or otherwise use any medical information for
31 any purpose not necessary to provide health care services to the
32 patient.

33 (e) Except to the extent expressly authorized by the patient or
34 enrollee or subscriber or as provided by subdivisions (b) and (c),
35 no contractor or corporation and its subsidiaries and affiliates shall
36 further disclose medical information regarding a patient of the
37 provider of health care or an enrollee or subscriber of a health care
38 service plan or insurer or self-insured employer received under
39 this section to any person or entity that is not engaged in providing
40 direct health care services to the patient or his or her provider of

1 health care or health care service plan or insurer or self-insured
2 employer.

3 ~~(f) This section shall become operative January 1, 2003.~~

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

